



# GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

28 W. State Street  
P.O. Box 082  
Room 1407  
Trenton, New Jersey 08625  
609-292-1892  
Web Site: <http://www.state.nj.us/lps/ethics>  
Email: [ethics@eces.state.nj.us](mailto:ethics@eces.state.nj.us)

## EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chair Ida Castro, Commissioner Timothy J. Dacey, Commissioner Lizette Delgado, Commissioner Alisha Griffin, Commissioner Paul Josephson, Commissioner Susan Bass Levin, Commissioner Kevin McCabe; Executive Director Rita L. Strmensky.

### COMMISSION CASE NO. 13-02

**SUBJECT:** Leave of Absence.

**FACTS:** The Department requested an opinion from the Commission as to whether an individual who was hired as the Director of the Office of Policy and Planning was permitted, under the Conflicts Law, to take an unpaid leave of absence from her current employer, a nonprofit research group.

**RULING:** The Commission advised the Department that the individual was prohibited under sections 23(e)(1) and (7) of the Conflicts Law from serving as the Director of Policy and Planning while on leave of absence from the nonprofit entity.

**REASONING:** The Commission had not previously addressed the issue of an individual taking a leave of absence from a private sector employer to serve in State government. In its review, the Commission considered various State programs that involved leaves of absence in connection with employment opportunities such as: the

Employee Interchange Program, *N.J.A.C.* 4A:6-4.8(a); the Governor's Executive Corps, a 1995 initiative that linked participating corporate employees with an agency of State government; and *N.J.S.A.* 52:14-16.2, which addresses the issue of tenured or classified service State officers or employees appointed to another State office by the Governor.

The Commission noted that the above statutes and regulations provide the authority for State agencies and private sector employees to enter into mutually beneficial agreements. Such agreements are typically formalized, set forth clearly defined objectives, are for a specific period of time, and address the source of compensation.

The Commission also looked to other jurisdictions for guidance. Most jurisdictions that have considered the issue have done so in the context of initiatives similar to New Jersey's Employee Interchange and Governor's Executive Corps Programs. The remainder of jurisdictions that have addressed the issue have statutes or regulations that authorize such leaves.

One of the purposes of the Conflicts Law is to prohibit a State official from having an overlap between his/her official duties and his/her private life that results in compromised objectivity and independence of judgment. A leave of absence constitutes a continuing link with the former employer that could be seen as splitting the individual's loyalties between her State employment and a private interest. The Commission noted that, ordinarily, overlap between one's official duties and private life can be addressed by recusal on specific matters; however, recusal is not a very workable solution in areas of broad policy determinations.

The cases presented in "Guidelines" are designed to provide State employees with examples of conflicts issues that have been addressed by the Executive Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

## **COMMISSION CASE NO. 16-02**

**SUBJECT:** Outside Employment, Expert Testimony, Representation.

**FACTS:** The agency requested an opinion from the Commission regarding the secondary employment activities of one of the agency's investigators. The investigator provided consulting services to private attorneys and, in some cases, testified as an expert witness in municipal court. The investigator also held a private investigator license.

**RULING:** The Commission advised that an agency investigator is permitted to act as an expert witness so long as he does not perform these services for attorneys or defendants with whom he has contact in his official capacity. In addition, the investigator must not use State time or resources in connection with his outside employment.

As to the issue of a private investigator license, the Commission advised that an agency investigator may not engage in outside employment as a private investigator, but may retain his license.

**REASONING:** Section 16(c) of the Conflicts Law specifically carves out an exception for appearances before a court of record. However, Advisory Opinion No. 38 recognized that it may be necessary to review such activities under other sections of the Conflict Law.

The Commission determined that the investigator's outside activity as an expert witness did not appear to be problematic under the Conflicts Law. In his outside position, the investigator had no involvement with local police departments or attorneys that he dealt with in his official capacity. In the event that a former private client came to the agency for services, the investigator would be required to recuse himself from any involvement with the case.

The Commission determined that because private investigative work frequently involves interaction with local law enforcement officials, an agency investigator would be dealing with some of the same individuals in both his official and outside positions, raising concerns under sections 23(e)(1), (5) and (7) of the Conflicts Law.

## **COMMISSION CASE NO. 17-02**

**SUBJECT:** Post- Employment.

**FACTS:** The former State employee requested an opinion from the Commission as to whether he was permitted, under the section 17 post-employment restriction, to participate in Phase II of a project. The former employee was substantially and directly involved in Phase I of the project during his State employment. The individual's former agency had issued an RFP for Phase II of the project. One of the entities that responded to the RFP had

included the former State employee as a member of its project team.

**RULING:** The Commission advised the former State employee that he was prohibited under the section 17 post-employment restriction from participating in Phase II of the project on behalf of a private employer.

**REASONING:** When reviewing a post-employment matter, the Commission has used a two-pronged analysis: 1. Is the former employee representing, appearing for, negotiating on behalf of, or providing information or services not generally available to a party other than the State? 2. Was the former employee substantially and directly involved in the matter in question?

In this situation, the first prong of the Commission's two-pronged analysis was satisfied because the former State employee's activities on behalf of a private entity would be representational in nature. It was the former State employee's position that he would not be representing a party other than the State, but would be representing the interests of the State. The Commission accepted this argument in prior cases when the individual was independently contracting with the State. However, the Commission has declined to accept this argument where a third party is involved.

As to the second prong of the test, the "matter" in question was the project itself. Phase II was not considered to be a separate "matter" for the purposes of section 17. Where a project is multi-faceted, of long duration, or sequential in development, the Commission has declined to segment the project.

## **COMMISSION CASE NO. 21-02**

**SUBJECT:** Post-Employment; Attorney

**FACTS:** The former State employee requested an opinion from the Commission as to whether she was permitted to represent clients regarding applications submitted to the Unit with which she was previously employed. As a State employee, the individual interpreted applicable federal regulations, provided staff training, responded to inquiries regarding the program which her Unit oversaw, and supervised and evaluated staff.

**RULING:** The Commission advised the former employee that she was permitted to represent clients before her former Unit so long as she had no previous involvement with the particular case in question in her State position.

**REASONING:** When reviewing a post-employment matter, the Commission has used a two-pronged analysis: 1. Is the former employee representing, appearing for, negotiating on behalf of, or providing information or services not generally available to a party other than the State? 2. Was the former employee substantially and directly involved in the matter in question?

In this situation, the first prong of the

Commission's two-pronged analysis was satisfied because the State employee's activities on behalf of clients would be representational in nature.

As to the second prong of the test, the Commission determined that each case submitted to the former employee's agency was a separate matter for the purposes of the section 17 post-employment restriction.

### **Ethics Liaison Officers' Meetings**

Executive Order No. 10 (McGreevey, 2002), Section IV.3, requires that the Executive Commission staff hold quarterly meetings with all ethics liaison officers. The purpose of these meetings is to ensure that the requirements of the Conflicts Law and the Order are being understood and followed.

The following meetings have been scheduled for the remainder of the year:

Tuesday, August 20, 2002, 9:00 a.m. to 10:30 a.m.  
Tuesday, October 29, 2002, 2:00 p.m. to 3:30 p.m.

All meetings will be held in room 218, 20 West State Street (Mary G. Roebling Building), Trenton.

### **TEST YOUR KNOWLEDGE OF THE ETHICS RULES**

Test your knowledge of the Commission's Attendance at Events Rules. After you have reviewed the summary of the rules provided below, test your understanding by answering the questions. Full text of the rules can be found at N.J.A.C. 19:61-6.1 et seq.

The rules apply to State Officers and Employees and Special State Officers and Employees.

Under the rules, an event is defined as:

- A meeting, conference, seminar, speaking engagement, training course, groundbreaking, ribbon cutting, open house, cocktail party, or fundraiser that takes place away from the work location;
- Sponsored or co-sponsored by a non-State government source;
- Invitation is extended to State official because of his/her official position.

Must receive prior written approval from Ethics Liaison Officer.

First question that must be asked: Is a legitimate State purpose served by the State official's attendance at the event?

Second question that must be asked: Who is the sponsor?

There are two categories of sponsors: (1) interested parties (2) entities other than interested parties

Who is an interested party?

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority of the State official's agency;
2. Any supplier, or employee, representative or agent thereof;
3. Any organization that advocates or represents the positions of its members to the State official's agency; or
4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

If the event is sponsored by an interested party, the State official must pay the expenses associated with attending the event. Neither the State nor the State official may receive a direct or indirect benefit from any other source.

Interested Party Exceptions:

- Events designed to provide training, dissemination of information, or exchange of ideas and the State official must be making a speech, participating in a panel or is an accompanying resource person;
- Benefit must be identical to that provided to other speakers or panel participants;
- Situation cannot raise an actual conflict or appearance of a conflict;
- Approvals under the exception must be forwarded to the Commission;
- Cannot accept an honorarium;
- No acceptance of entertainment collateral to the event.

Entities Other Than Interested Parties:

- State may pay;
- State official may accept direct/indirect benefits;
- No acceptance of entertainment collateral to the event;
- May accept an honorarium;
- Not necessary to forward approvals to the Commission.

USE OF OFFICIAL TITLE FOR FUNDRAISING, N.J.A.C. 19:61-6.6.

A State official shall not permit the use of his or her official title for the purpose of fundraising for a private organization;

May use “The Honorable”;

May fundraise in private capacity.

Now that you have an overview of the Attendance Rules, here are some scenarios for you to evaluate. You are the Ethics Liaison Officer and an employee has come to you requesting advice about attendance at events and use of official title.

#### Scenario 1

The ABC lobbying firm is hosting its annual holiday party. John, the Director of Bridge Design and Construction at the Department of Transportation (“DOT”), has been invited to the party. While ABC has had involvement with other divisions at the DOT, John has never personally had any dealings with ABC. The party is being held at the Princeton Hyatt Ballroom on Friday from noon until nine and will include a buffet and open bar. John would like to attend. What advice would you give him?

A. Because the party advances the legitimate State purpose of raising employee morale, John may attend at no cost to him or the State.

B. Because ABC is an interested party, John may not attend.

C. Because ABC is an interested party, and no legitimate State purpose is served, John may attend but must do so on his own time and pay for the cost of the buffet and drinks.

#### Scenario 2

Lisa, an Inspector at the Department of Health and Senior Services (“DHSS”), has been asked to speak about new DHSS regulations at the New Jersey Hospital Administrator’s (“NJHA”) annual conference at the Seaview County Club. She will be the luncheon speaker. NJHA has also invited Lisa to play golf after the lunch; all costs will be borne by NJHA .

A. Attendance at the event serves the legitimate State purpose of providing information about newly adopted DHSS regulations; Lisa may attend. NJHA is an interested party; however, under the speaker exception, Lisa may accept the lunch and any travel or lodging costs associated with the event. She may not play golf at NJHA’s expense because this is a collateral event.

B. Attendance at the event serves a legitimate State purpose. Because NJHA is an interested party, the State must pay all expenses associated with the event.

C. Lisa may not attend the event because it is sponsored by

an interested party and will create an appearance of impropriety.

#### Scenario 3

Mark, a Housing Specialist at the New Jersey Housing and Mortgage Finance Agency, attends monthly meetings at the Economic Development Authority (“EDA”) to discuss financing issues. Mark asks whether he must complete an attendance form in order to comply with N.J.A.C. 19:61-6.1 et seq.

A. Because Mark attends these meetings regularly, he needn’t bother with the forms.

B. Mark must complete an attendance form each time he attends a meeting at EDA.

C. Because the meeting is not sponsored by a non-State government source, it does not qualify as an event under the attendance rules; thus, no approval is required.

#### Scenario 4

Elaine, Assistant Commissioner, Department of Personnel, is scheduled to receive an award from the National Association of Personnel Managers (“NAPM”) at its annual fundraising dinner. Elaine is also planning to give a presentation at the dinner on “Management Strategies for the 21<sup>st</sup> Century.” NAPM has offered Elaine an honorarium. Elaine asks what, if any, restrictions apply to her under the Attendance Rules.

A. Because NAPM is not an interested party, there are no restrictions on Elaine’s attendance.

B. Because NAPM is not an interested party, Elaine may accept the dinner, travel, accommodations, and honorarium, but may not permit her official title to be used for fundraising purposes.

C. The acceptance of honoraria is prohibited under the rules; thus, Elaine may not accept the honorarium.

#### Answers

##### Scenario 1

*A is incorrect. While raising employee morale is a laudable goal, it cannot necessarily be accommodated by the Conflicts Law.*

*B is incorrect. John is not precluded from attending an event sponsored by an interested party, but he must pay the reasonable cost of the food and beverages consumed.*

*C is the correct answer .*

##### Scenario 2

*A is correct. Because Lisa’s attendance serves a legitimate*

*State purpose, she may attend. She may accept the travel, accommodations, and lunch because she is a speaker at the event. Attendance at collateral events is not permitted. Lisa's approved attendance form must be forwarded to the Commission.*

*B is incorrect. Pursuant to the speaker exception, Lisa may accept direct and indirect benefits associated with the event.*

*C is incorrect. Pursuant to the speaker exception, Lisa may accept direct and indirect benefits associated with the event.*

### Scenario 3

*A is incorrect. The regularity of an event is not a factor to be considered in requesting approval.*

*B is incorrect. The meetings do not qualify as events under the attendance rules.*

*C is correct. The meetings do not qualify as events under the attendance rules.*

### Scenario 4

*A is incorrect. While Elaine may accept direct/indirect benefits from non-interested parties. State employees are prohibited from using their official titles for fundraising purposes.*

*B is correct. Because NAPM is not an interested party, Elaine may accept direct/indirect benefits, but may not use her official title for fundraising purposes.*

*C is incorrect. State employees may not accept an honorarium from an interested party, but may accept an honorarium from non-interested parties.*

### Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to

Jeanne A. Mayer, Esq., Deputy Director  
Executive Commission on Ethical Standards  
P.O. Box 082  
Trenton, NJ 08625  
(609) 292-1892.